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6 Attorneys for Defendants  
7 W. DENMAN VAN NESS, WILLIAM K. BOWES, JR.,  
PETER BARTON HUTT, JOSEPH M. LIMBER,  
KELVIN M. NEU, PATRICK J. SCANNON,  
JOHN VARIAN, TIMOTHY P. WALBERT,  
PAUL D. RUBIN AND JACK L. WYSZOMIERSKI  
9 and Nominal Defendant XOMA CORPORATION

10  
11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 DEBORAH A. FIESER, derivatively on  
16 behalf of XOMA CORPORATION,

17 Plaintiff,

18 v.

19 W. DENMAN VAN NESS, WILLIAM K.  
BOWES, JR., PETER BARTON HUTT,  
JOSEPH M. LIMBER, KELVIN M. NEU,  
PATRICK J. SCANNON, JOHN  
VARIAN, TIMOTHY P. WALBERT,  
PAUL D. RUBIN AND JACK L.  
WYSZOMIERSKI and Nominal Defendant  
XOMA CORPORATION,

23 Defendants.  
24

Case No. 4:15-CV-05236-JST

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**STIPULATION AND [PROPOSED]  
ORDER STAYING THE ACTION**

Judge: Honorable Jon S. Tigar

1 Plaintiff Deborah A. Fieser ("Plaintiff"), nominal defendant XOMA Corporation  
 2 ("XOMA"), and individual defendants Patrick J. Scannon, John W. Varian ("Varian"), Paul D.  
 3 Rubin ("Rubin"), William K. Bowes Jr., Peter Barton Hutt, Joseph M. Limber, W. Denman Van  
 4 Ness, Timothy P. Walbert, Jack Wyszomierski, and Kelvin M. Neu (the "Individual Defendants,"  
 5 and together with XOMA, the "Defendants"), by and through their undersigned counsel,  
 6 stipulate as follows:

7 WHEREAS, on July 24, 2015, a securities class action (the "Securities Action") was filed  
 8 in the U.S. District Court for the Northern District of California against XOMA and defendants  
 9 Varian and Rubin, captioned *Markette v. XOMA Corporation, et al.*, No. 3:15-cv-03425-HSG,  
 10 and several motions for the appointment of lead plaintiff and lead counsel have been filed in the  
 11 Securities Action;

12 WHEREAS the factually related above-captioned shareholder derivative action (the  
 13 "Derivative Action") alleges, among other things, breaches of fiduciary duties and violations of  
 14 law by certain of the directors and officers of XOMA;

15 WHEREAS, a factually related shareholder derivative complaint, captioned *Silva v.*  
 16 *Scannon, et al.*, Sup. Ct. Case No. RG15787990, was previously filed on October 1, 2015 and is  
 17 pending before the Superior Court of the State of California, County of Alameda (the "State  
 18 Derivative Action");

19 WHEREAS, Defendants intend to file a motion to dismiss in the Securities Action and, if  
 20 any amended complaints are filed therein, Defendants intend to file motions to dismiss the  
 21 amended complaints as well;

22 WHEREAS, the State Derivative Action has been stayed pending further developments  
 23 in the Securities Action;

24 WHEREAS, Plaintiff and Defendants (collectively, the "Parties") in the Derivative  
 25 Action have met and conferred regarding the most efficient manner in which to proceed;

26 WHEREAS, the Parties agree that the ruling on any anticipated motions to dismiss in the  
 27 Securities Action may help inform the manner in which the Derivative Action proceeds; and

28

1           WHEREAS, based upon the circumstances unique to the Derivative Action and in  
 2 furtherance of the goal of judicial economy, the Parties agree that the interests of justice and  
 3 efficient and effective case management would best be served by staying the Derivative Action  
 4 pending a resolution of all motions to dismiss in the Securities Action;

5           NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties,  
 6 through their respective counsel of record, as follows:

7           **TEMPORARY STAY OF THE DERIVATIVE ACTION**

8           1.       Subject to paragraph 2 below, all proceedings in the Derivative Action shall be  
 9 stayed until the resolution of all motions to dismiss the Securities Action.

10          2.       Upon expiration of the stay, the Parties in the Derivative Action will meet and  
 11 confer in good faith to determine a schedule for the Derivative Action going forward, and will  
 12 submit a proposed scheduling stipulation for this Court's review and approval.

13          3.       Defendants shall not be obligated to respond to the complaint filed in the  
 14 Derivative Action until a scheduling stipulation has been entered by the Court pursuant to  
 15 paragraph 2 above after the stay has been lifted. Notwithstanding the stipulated stay, Plaintiff  
 16 shall be permitted to file an amended complaint during the pendency of the stay, but Defendants  
 17 shall be under no obligation to respond to any complaint while the stay is in effect. Defendants  
 18 reserve all of their defenses to the claims asserted by Plaintiff and other rights, and the stay shall  
 19 not be, and shall not be deemed, a waiver of any of Defendants' defenses or other rights.

20          4.       The Parties agree that any challenges to Plaintiff's allegations that demand on the  
 21 XOMA Board of Directors (the "Board") is or was futile will be determined based on the  
 22 composition of the Board as of the time the first complaint in this action was filed.

23          5.       This Stipulation shall not preclude or prevent the Parties from stipulating to, or  
 24 moving for, a court order lifting, modifying or extending the terms of this Stipulation upon a  
 25 showing of good cause.

26          6.       By entering into this Stipulation, the Parties do not waive any rights not  
 27 specifically addressed herein, including the right to file any motion any party deems appropriate  
 28 once this case is no longer temporarily stayed.

1 IT IS SO STIPULATED.

2 Dated: May 6, 2016

COOLEY LLP

4 */s/ Jessica Valenzuela Santamaria*

5 Jessica Valenzuela Santamaria (220934)

6 Attorneys for Defendants W. DENMAN VAN NESS,  
7 WILLIAM K. BOWES, JR., PETER BARTON HUTT,  
8 JOSEPH M. LIMBER, KELVIN M. NEU, PATRICK J.  
SCANNON, JOHN VARIAN, TIMOTHY P.  
WALBERT, PAUL D. RUBIN AND JACK L.  
WYSZOMIERSKI and Nominal Defendant XOMA  
CORPORATION

9 Dated: May 6, 2016

10 GREEN & NOBLIN, P.C.

11 And

12 FEDERMAN & SHERWOOD  
13 WILLIAM B. FEDERMAN

14 */s/ Robert S. Green*

15 Robert S. Green (136183)

16 Attorneys for Plaintiff DEBORAH A. FIESER

17 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

18 DATED: \_\_\_\_\_

19 \_\_\_\_\_  
20 Honorable Jon S. Tigar  
21 United States District Judge

## **ATTESTATION OF CONCURRENCE IN FILING**

Pursuant to Local Rule 5-1 of The United States District Court for the Northern District of California, I, Jessica Valenzuela Santamaria, hereby attest that the concurrence to the filing of the foregoing document has been obtained from Robert S. Green, who provided the conformed signature above.

Dated: May 6, 2016

COOLEY LLP

/s/ Jessica Valenzuela Santamaria

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Jessica Valenzuela Santamaria (220934)

Attorneys for Defendants W. DENMAN VAN NESS,  
WILLIAM K. BOWES, JR., PETER BARTON HUTT,  
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